



IRA A. JACKSON  
COMMISSIONER

# *The Commonwealth of Massachusetts*

*Department of Revenue*

*Leverett Saltonstall Building,*

*100 Cambridge Street, Boston 02204*

January 18, 1983

You inquire whether the deeds excise applies to the deed by which ("Corporation A"), a Massachusetts nonprofit corporation, is transferring real estate located in Massachusetts to ("Corporation B"), an Ohio nonprofit corporation.

Corporation A has petitioned the Supreme Judicial Court for authorization to dissolve and dispose of its assets. On October 13, 1982, the Court issued an interlocutory decree authorizing Corporation A to dissolve, and directing it to transfer all its remaining assets, after payment of its remaining liabilities, to Corporation B. The decree will become final upon filing of an affidavit of compliance with its terms.

In accordance with the decree, Corporation A is transferring the real estate and its other remaining assets to Corporation B. Corporation B will pay no money to Corporation A for the transfer, but is guaranteeing payment of all of Corporation A's debts.

Corporation B holds a mortgage on the realty to secure a debt from Corporation A to Corporation B of one million dollars.

General Laws Chapter 64D, Section 1 imposes an excise on the instruments by which realty is conveyed. The excise does not apply when the consideration for the property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, is one hundred dollars or less, nor does it apply to any instrument or writing given to secure a debt (G.L. c. 64D, s. 1).

January 18, 1983

Section 4361 of the Internal Revenue Code, which was repealed effective January 1, 1968, imposed a federal deeds excise substantially similar to the Massachusetts deeds excise in Chapter 64D.

The federal regulations interpreting Section 4361 included the following among the conveyances subject to the tax:

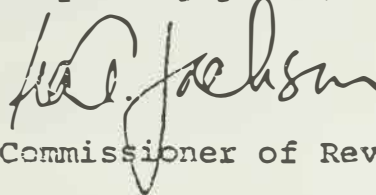
"(3) A conveyance by a defaulting mortgagor to the mortgagee in consideration of the cancellation of the mortgage debt." U.S. Treas. Reg. 43.4361-2(a)(3).

A conveyance by a mortgagor to a mortgagee extinguishes the lien of the mortgage; the mortgage, therefore, does not remain a lien on the property at the time of sale (see Rev. Rul. 55-578, 1955-2 C.B. 672).

Based on the foregoing, it is ruled that the deed by which the realty is transferred from Corporation A to Corporation B is subject to the deeds excise.

The consideration on which the excise is based is measured by the mortgage balance, plus the amount, if any, by which the other liabilities assumed exceed the value of the personal property transferred.

Very truly yours,

A handwritten signature in dark ink, appearing to read "H. C. Jackson", is written over the typed name of the Commissioner of Revenue.

Commissioner of Revenue

IAJ:JXD:mf

LR 83-4